

FILED

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JOB JOHNSON ALVAREZ-VALDIVIA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71276

Agency No. A95-296-674

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted October 11, 2005^{**}

Before: HALL, T.G. NELSON, and TALLMAN, Circuit Judges.

Job Johnson Alvarez-Valdivia, a native and citizen of Peru, petitions for review of the Board of Immigration Appeals' ("BIA") decision adopting and affirming an Immigration Judge's order denying his applications for asylum,

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

withholding of removal, and for protection under the Convention Against Torture. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the BIA's decision for substantial evidence, *Ramos-Vasquez v. INS*, 57 F.3d 857, 861 (9th Cir. 1995), and we grant the petition for review and remand.

The BIA's determination that country conditions evidence rebutted Alvarez-Valdivia's well-founded fear of persecution is not supported by substantial evidence because the record compels the conclusion that as a potential witness in the prosecution of the Colina Group, Alvarez-Valdivia has reason to fear physical harm or even death if returned to Peru. *See Ali v. Ashcroft*, 394 F.3d 780, 789 (9th Cir. 2005) (holding that the presumption of a well-founded fear of persecution has not been rebutted when evidence in country reports indicates that persecution similar to that experienced by the petitioner still exists). Alvarez-Valdivia's past persecution at the hands of the Colina Group, coupled with evidence of ongoing threats and intimidation of potential witnesses in the prosecution of the organization, establishes a well-founded fear of persecution on a protected ground. *See id.*

Accordingly, we grant the petition for review and remand to the BIA to determine whether Alvarez-Valdivia is entitled to asylum as an exercise of

discretion, and to enter an order for withholding of removal. *See Singh v. Ashcroft*, 362 F.3d 1164, 1172 (9th Cir. 2004) (amended opinion).

PETITION FOR REVIEW GRANTED; REMANDED.